

## REMARKS/ARGUMENTS

### *35 U.S.C. § 103 Rejections*

In the Office Action, Claims 1-11 and 13-23 were rejected as being unpatentable over Published U.S. Patent application No. 2003/0110504 to Plourde et al. (hereinafter "*Plourde*") in view of Korst's U.S. Patent No. 6,205,525 (hereinafter "*Korst*"). The Office Action states on pages 10 and 12 that Claims 12 and 24 would be allowable if rewritten in independent form.

#### Claims 1 and 13

Claims 1 and 13 were rejected as being unpatentable over *Plourde* in view of *Korst*. However, Applicants respectfully submit that Claims 1 and 13 are not rendered obvious by either *Plourde* or *Korst*, alone or in combination. As *Plourde* is alleged to teach most of the elements, Applicants begin by briefly describing *Plourde*.

*Plourde* discloses a Digital Video Recorder ("DVR") system that allows storing of subscriber television content on a storage device, preferably a hard drive (*Plourde* para 87). *Plourde* teaches that the storage device is of a fixed size and that the operating system makes use of a File Allocation Table ("FAT") to store information about the hard disk clusters and the files associated with those clusters (*Plourde* para 88).

On page 3, the Office Action suggests that a "container file," as in Claim 1, is taught by *Plourde*'s hard drive with a FAT file that contains information about media content instance files. However, a container file, as in Claim 1, offers a level of flexibility that is not needed, nor taught or suggested by *Plourde*'s hard drive with a FAT file. Specifically, as is implied in a later element of Claim 1, a container file may vary in size; whereas, a hard drive with a FAT file is necessarily fixed in size. Thus, the size of a container file may be adapted to suit various circumstances, while a hard drive is not flexible enough to do so. In addition, the creation of *Plourde*'s hard drive with a FAT file typically requires destructively "formatting" the hard drive. See [http://en.wikipedia.org/wiki/Disk\\_format](http://en.wikipedia.org/wiki/Disk_format). By contrast, container files can be easily and nondestructively created and disposed of as needed. Furthermore, because a FAT is a type of file system, see [http://en.wikipedia.org/wiki/File\\_Allocation\\_Table](http://en.wikipedia.org/wiki/File_Allocation_Table), *Plourde*'s hard drive would typically involve a file system's overhead and would be complex to design and administer. By contrast, container files offer facilities to perform few complex tasks and are therefore not only more flexible than *Plourde*'s hard drive, but also much simpler. Accordingly, *Plourde* does not teach this element of Claims 1 and 13.

The Office Action further suggests that a “virtual file for each of one or more presentation sources,” as in Claim 1, is taught by *Plourde*’s media content instance files. In support of this suggestion, the Office Action on page 11 states that “the FAT [has] entries describing attributes of content media instance files where directory structured virtual file contains one or more entries and the structure does teach one directory having one entry.” Apparently, the argument is that a “virtual file for each of one or more presentation sources” is identical to a disk drive with a file allocation table that contains an entry describing a single file. Applicants respectfully submit that the “virtual file for each of one or more presentation sources” is much more flexible and useful than the scenario described in the Office Action. Applicants further respectfully submit that *Plourde* lacks any suggestion that media content instance files may be virtually aggregated and organized by presentation source. Such convenience is offered only by Claims 1 and 13; therefore, *Plourde* does not teach this element of these claims.

After correctly noting that *Plourde* does not teach “determining a container file size,” the Office Action suggests on pages 3-4 that determining a container file size, as in Claim 1, is taught by *Korst*’s calculation of the size of the data block to be read in the following sweep operation. However, while *Korst* may disclose a process that involves a “determination” of a “size,” even a cursory reading of *Korst* makes clear that it does not teach “determining a *container file size*.” A brief summary of *Korst* explains why.

*Korst* discloses a video on demand *server* that efficiently buffers content data for streaming to a user device. The content data addressed in *Korst* is stored on a storage medium, such as a hard drive, and must be retrieved from the storage medium in blocks (*Korst* col. 7, lines 13-42). The calculation that *Korst* teaches involves figuring out how many blocks of data to read from the hard drive and insert into a buffer for ultimate delivery to a client device, a calculation that depends not on the contents of any container file, but on the number of streams that the server is sending out to client devices (*Korst* col. 7, lines 13-42). Thus, *Korst* does not teach this element of Claims 1 and 13 because unlike Claim 1, *Korst* does not determine the size of any sort of container, let alone “determining a container file size” as recited in Claims 1 and 13.

Finally, Applicants are unable to discern how “rendering at least one of said one or more data streams” is taught by *Korst*’s scheduler’s determining the number of active streams and calculating the size of the data block to be read, as suggested by the Office Action on page 4. The cited reference to *Korst* does not teach or even suggest the “rendering” of a stream; rather, *Korst* teaches at most only that a data stream may be transmitted to a client, a process that is very different from “rendering” a data stream into a form that may be perceived by a user.

### Claims 2-11 and 14-23

Claims 1 and 13 are allowable as noted above. Accordingly, dependent Claims 2-11 and 14-23 are allowable because they depend from allowable claims. In addition, these claims include recitations not taught, disclosed, or even suggested by *Plourde* or *Korst*, alone or in combination. A nonexclusive listing of further reasons Claims 2-11 and 14-23 are allowable are included below.

For example, Claims 3 and 15 recite “storing second data associated with a second data stream of the first presentation source in association with the first virtual file.” *Plourde*, however, does not refer in any way to “virtual” files. On the contrary, *Plourde* merely cites a conventional FAT storage system with conventional separate files on a conventional storage medium. In particular, *Plourde* (and *Korst*) fail to teach or suggest, alone or in combination, storing a presentation that can contain multiple sources within a single container file as one or more virtual files. For these reasons, in addition to those already noted above, Claims 3 and 15 and their dependent claims are in condition for allowance.

For another example, Claims 9 and 21 include “a first data block; and a file descriptor block containing at least a seek index and a seek index granularity, wherein the seek index indicates a plurality of equally distributed data blocks within the corresponding virtual file and the granularity indicates a size for each of the data blocks.” *Plourde* and *Korst* also fail to teach or suggest such a seek index, let alone a seek index that indicates a plurality of equally distributed data blocks within the corresponding virtual file. The portions of *Plourde* that were cited as teaching a seek block (paragraphs 88 and 110) do not mention seek indexes, let alone a seek index as recited in Claim 9. *Plourde* merely states “The type of media content (e.g. westerns, comedies, action, etc) can be presented to the user (for selection, or user configurable without a pre-configured list), and then a preference filter can seek and effect the receipt of such content for contemporaneous and/or later viewing.” It is clear that *Plourde*’s mere mention of the word “seek” is not a sufficient teaching to render Claim 9 obvious. Indeed, whereas the “seek index” recited in Claims 9 and 21 is for the purpose of “seeking” within a virtual media file, the verb “seek” in *Plourde* has as its object not a media file, but rather a *list* of media content types. In other words, the only “seeking” suggested by *Plourde* is “seeking” through a list of content types. By contrast, Claims 9 and 21 recite a seek index that may be used to skip around inside a media file. For this reason as well, in addition to those already noted above, Claims 9 and 21 and their dependent claims are in condition for allowance.

Plourde and Korst should not have been combined

On page 10 of Applicants' response of October 17, 2006, the Applicants noted that "the Examiner has attempted to use the pending application to define the problem to be solved by reference to different elements from the prior art." On page 12 of the Office Action, the Examiner replied that "the motivation or suggestion of combination of the references does come from the BACKGROUNDS OF INVENTION of the references...." Applicants continue to believe not only that *Korst* and *Plourde* do not individually teach all of the elements of the claims, as detailed above, but also that a person of ordinary skill in the art would have had no motivation to combine these two references.

The U.S. Supreme Court recently issued an opinion regarding obviousness. According to that opinion, it remains "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements." *KSR Int'l. Co v. Teleflex Inc.*, 127 S. Ct. 1727, 167 L. Ed. 2d 705, 722 (April 30, 2007). The Court elaborates, "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 720. Applicants respectfully submit not only that there is no reason that would have prompted a person of ordinary skill in the art to combine *Korst* and *Plourde*, but also that the combination of *Korst* and *Plourde* would not yield the results obtained in the Claims. Hence, the combination of *Korst* and *Plourde* would not yield "predictable results" and is not likely to be obvious.

The background sections of *Korst* and *Plourde* do not, counter to the Examiner's argument, provide a motivation to combine. Generally, the background section of a patent merely lays out the problem to be solved. Because the problems to be solved that are laid out in the background sections of *Korst* and *Plourde* relate at most only peripherally to the problems that the Applicants address, and because there is suggestion in either background to make such a combination, Applicants respectfully submit that the background sections of *Korst* and *Plourde* provide no motivation to combine.

For example, *Plourde* explains that it addresses the problems that arise when a television viewer wishes to watch two or more programs at the same time or wishes to watch a program that is on when the viewer is away from the television (*Plourde* para 5). *Plourde* solves these problems by providing a better "buffering" mechanism that would be employed by a digital video recorder, such as a Tivo®. In other words, *Plourde* works with media data that arrives from elsewhere at a constant rate, at a known time, for a known duration.

By contrast, *Korst* explains that it addresses problems faced by streaming media servers that may have to stream many different streams of different pieces of media out to many different clients. To that end, *Korst* provides, “[t]o supply data to a user as a continuous data stream, special scheduling schemes for reading data from the disks are required with an appropriate scheme for temporarily buffering the read data before the data is supplied to the user” (*Korst* col. 1, lines 55-58). In other words, *Korst* works with a large quantity of media data that is stored locally, but that distant, disparate clients may want to access at unknown rates, at unknown times, for unknown durations.

Thus, as their background sections make clear, the only commonalities between *Korst* and *Plourde* are that they both relate to media data sent from one place to another. On the other hand, there are many differences that would have deterred one of ordinary skill in the art from combining the two. Particularly, *Korst* addresses problems that are not faced by media-receiving client devices, such as are the subject of *Plourde*. Unlike streaming media servers, which are the subject of the problems solved by *Korst*, a client device has no need to read data in sweeps from a hard drive; a client device does not need to service multiple requests for data streams; nor does a client device need to juggle the delivery of different pieces of media that are stored in disjunct sectors on a local hard drive. Clearly, the problems faced by streaming servers differ greatly from those faced by client devices. Therefore, there is no reason why a person of ordinary skill in the art would have been motivated to combine *Plourde*, which deals with client devices, and *Korst*, which deals with server devices.

Given these differences, the only way that one could combine *Korst* and *Plourde* to reach the results obtained in the recited Claims is by “engage[ing] in a hindsight reconstruction of the claimed invention, using the applicant’s structure as a template and selecting elements from references to fill the gaps.” See *In re Gorman*, 993 F.2d 982, 18 U.S.P.Q.2d 1885 (1991). However, the Examiner may not “use hindsight reconstruction to pick and choose among isolated disclosures in the prior art” to determine that the recited Claims are unpatentable over *Plourde* in view of *Korst*. See *Ecolochem, Inc. v. Southern California Edison Co.*, 227 F.3d 1361, 56 U.S.P.Q.2d 1065 (2000).

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of amended Claims 1 and 13. In addition, Applicants suggest that Claims 2-11 and 14-23, which depend directly or indirectly on Claims 1, and 13, are patentably distinct over the combination of *Plourde* in view of *Korst*. In addition, Applicants graciously acknowledge the Examiner’s indication that Claims 12 and 24 would be allowable if rewritten in independent

form. Applicants respectfully note, however, that given the allowability of their respective base claims, such an amendment is unnecessary at this time.

### **CONCLUSION**

Applicant submits that all pending claims are in condition for allowance. Accordingly, early and favorable action allowing all of the pending claims and passing this application to issue is respectfully requested. The Examiner is respectfully requested to contact the undersigned at the telephone number below if there are any remaining questions regarding this application.

We believe the appropriate fees accompany this transmission. If, however, insufficient fee payment or fee overpayment occurs, the amount may be withdrawn or deposited from/to Axios Law Group's deposit account. The deposit account number is 50-4051.

Respectfully submitted,  
AXIOS LAW GROUP

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